

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF NORTH CAROLINA
SOUTHERN DIVISION

No. 7:10-CR-125-FL
No. 7:13-CV-97-FL

PATRICK AARON WAZNY,)	
)	
Petitioner,)	
)	
v.)	
)	ORDER
UNITED STATES OF AMERICA)	
)	
Respondent.)	
)	
)	

This matter is before the court on petitioner's motion to vacate under 28 U.S.C. § 2255 (DE 46) and respondent's motion to dismiss (DE 51). Petitioner has not responded to respondent's motion to dismiss. The clerk notified petitioner on August 1, 2013, that failure to respond to the motion to dismiss may result in dismissal of the case.

Where petitioner's claims other than ineffective assistance of counsel are barred by the waiver in his plea agreement and procedural default, and where petitioner's ineffective assistance of counsel claim is without merit for failure to establish deficient performance or prejudice under Strickland v. Washington, 466 U.S. 668, 689 (1984), the motion to dismiss will be granted and the motion to vacate will be denied. Having determined petitioner is not entitled to relief and the government is entitled to dismissal of the petition, the Court considers whether petitioner is nonetheless entitled to a certificate of appealability. See 28 U.S.C. § 2253(c). After reviewing the petition, the court finds that the applicable standard has not been met. Accordingly, a certificate of

appealability will be denied.

Based on the foregoing, respondent's motion to dismiss (DE 51) is GRANTED and petitioner's motion to vacate (DE 46) is DENIED and this action DISMISSED. A certificate of appealability is DENIED.

SO ORDERED, this the 30th day of October, 2013.

A handwritten signature in black ink, reading "Louise W. Flanagan". The signature is written in a cursive, flowing style. The first letter "L" is large and loops around. The "W" is also stylized. The signature is positioned above a horizontal line.

LOUISE W. FLANAGAN
United States District Judge